DOCUMENT RESUME

ED 282 573 IR 051 940

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TITLE Copyright Policy and Guidelines for Use of Copyrighted Materials.
INSTITUTION Carmel-Clay School District, Carmel, IN.
PUB DATE [Feb 86]
NOTE 18p.
PUB TYPE Legal/Legislative/Regulatory Materials (090)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Computer Software; *Copyrights; Elementary Secondary Education; *Legal Responsibility; Records (Forms); *Reprography; *School Libraries; Student Responsibility; Teacher Responsibility; Videotape Recordings
IDENTIFIERS Carmel Clay Schools IN; Downloading (Computer); Fair Use; *Off the Air Recordings; *Software Copying

ABSTRACT

A one-page copyright policy adopted by the Board of Education of Carmel Clay Schools, Carmel, Indiana, is accompanied by guidelines for the use of copyrighted materials designed for the use of school staff members. Following a general discussion of copyright, the guidelines include discussions of the following topics: (1) computer software; (2) database downloading; (3) photo and/or thermal copying; (4) tests of Fair Use regarding brevity, spontaneity, and cumulative effect; (5) videotapes; and (6) additional privileges for libraries and students. A "Request for Permission to Copy" form and two letters regarding the copyright policy and guidelines are also included. (KM)

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COPYRIGHT POLICY

It is the intent of the Board of Education of Carmel Clay Schools to adhere to the provisions of the current copyright laws and Congressional guidelines.

The Board recognizes that unlawful copying and use of copyrighted materials contributes to higher costs for materials, lessens the incentives for development of quality educational materials, and fosters an attitude of disrespect for law which is in conflict with the educational goals of this School Corporation.

The Board directs that Corporation employees adhere to all provisions of Title 17 of the United States Code, entitled "Copyrights", and other relative federal legislation and guidelines related to the duplication, retention, and use of copyrighted materials.

The Board further directs that:

1. Unlawful copies of copyrighted materials may not be produced on Corporation-owned equipment.

2. Unlawful copies of copyrighted material may not be used with Corporation-owned equipment, within Corporation-owned facilities, or at Corporation-sponsored functions.

3. The legal and/or insurance protection of the Corporation will not be extended to employees who unlawfully copy and use copyrighted materials.

Employees who make and/or use copies of copyrighted materials in their jobs are expected to be familiar with published provisions regarding fair use and public display, and are further expected to be able to provide their supervisor, upon request, the justification under Sections 107 or 110 of USC 17 for copies that have been made or used.

Employees who use copyrighted materials which do not fall within fair use or public display guidelines will be able to substantiate that the materials meet one of the following tests:

1. The materials have been purchased from an authorized vendor by the individual employee or the Corporation and a record of the purchase exists.

2. The materials are copies covered by a licensing agreement between the copyright owner and the Corporation or the individual employee.

3. The materials are being reviewed or demonstrated by the

IR051940

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user to reach a decision about possible future purchase or licensing and a valid agreement exists which allows for such use.

Though there continues to be controversy regarding interpretation of the copyright laws, this policy represents a sincere effort to operate legally. All school employees will be provided with copies of this policy and accompanying rulings.

Adopted 1-27-86

Guidelines for
Use of Copyrighted Materials

Copyright is the exclusive right that protects an author, composer, author, or programmer from having his or her work published, recorded, exhibited, translated, or reproduced by way of copies and other versions, except by permission. The purpose of copyright is to encourage the development of new and original works and to stimulate their wide distribution by assuring that their creators will be fairly compensated for their contributions to society.

Current American copyright law is embodied in Title 17 of the United States Code. Works of authorship include, but are not limited to, the following categories: computer programs; dramatic works, including any accompanying music; literary works; motion pictures and other audiovisual works; musical works, including any accompanying words; pantomines and choreographic works; pictorial, graphic, and sculptural works; and sound recordings.

The law affects classroom practices and necessitates that educational staff examine:

- WHAT they copy
- HOW MUCH they copy
- the PURPOSES for which they copy
- the CONDITIONS under which they copy

Of special interest to educational staff are the "fair use" doctrine and the accompanying Congressional guidelines which stipulate what may and may not be copied for use in schools and classrooms.

The following pages explain some highlights of the law and its accompanying guidelines. The guidelines, while not law, were generated in response to questions. They will be modified by future court decisions and legislative action. However, they are an interpretation of the law as developed by Congressional sub-committees.

If there are questions not covered by these pages, staff members should contact the Office of Media Services.

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COMPUTER SOFTWARE

A teacher may:

... make one archival or back-up copy of a copyrighted program. The school must keep this copy in storage and may only use

the copy if the original has been damaged and has been sent to the publisher for repair.

... adapt a copyrighted program from one language to another for which it is not commercially available or add features to a program to better meet local needs.

... write the publishers of copyrighted programs in order to obtain permission to use the software in a manner that could be a violation of the copyright law.

A teacher may not: (without the express permission of the software publisher/copyright owner)

... make multiple copies of copyrighted software (or a locally produced adaptation or modification), even for use within a school or school district.

... make replacement copies from an archival or back-up copy.

... make copies of copyrighted software (or a locally-produced adaptation or modification) to be sold, leased, loaned, transmitted. or even given away to other users.

... load a copyrighted program into several computers or a network from the same diskette and use them simultaneously.

... make multiple copies of the printed documentation that accompanies copyrighted software.

SUGGESTIONS:

Remember that WITH PERMISSION FROM THE COPYRIGHT OWNER the above prohibitions may be removed...or at least significantly modified.

A teacher should be skeptical of those who say, "Go ahead and copy; nobody will ever know." The teacher will know. Illegal copying of software is theft of the software authors' and publishers' legitimate right to produce income from their efforts.

The cost of necessary multiple copies of software should be included in the budget for educational projects. Buying enough will relieve the temptation to make unauthorized copies. The Office of Media Services will make every effort possible to provide funds for worthy projects. Teachers may discover that the school system already has several copies of the software needed; these could be gathered together for a project.

Teachers may inquire from OMS about special licenses available from software companies that allow the user to make and use multiple copies at reduced cost. It is necessary to follow the guidelines set up by the license so that software publishers will be encouraged to provide them to schools.

Staff should be responsible for ensuring that no copies are made of software that is provided by the software publisher for preview or approval. Copying of such materials has discouraged many software companies from allowing preview or purchase on approval.

Guidelines for video and audio recordings, books, periodicals, music,.etc., do not apply to microcomputer software. Computer software is different from these other materials, and no copyright guidelines have been approved by national educator-publisher committees as have been for other materials.

Members of computer clubs that are allowed to use school facilities should agree to adhere to the Copyright Law during meetings. A teacher or sponsor who allows these clubs to violate the law may share legal liability with the club.

Educators are role-models and should discourage students from making and using copies of copyrighted software. Nor should staff trade copies with students or ask them to produce copies. Staff should not use illegal copies of software with students or allow them to see illegal copies in use.

Staff should use reasonable care in protecting the copyrighted software owned by the school corporation from being copied by students. Part of the responsibility of owning software is to keep others from copying it illegally.

Staff members should not ask another educator who is more knowledgeable about computer software to make a copy of copyrighted software. Friendship is not a good reason for breaking the law. Making copies of copyrighted software for someone else is as illegal as making them for oneself.

All staff should share with others personal respect for the Copyright Law. Such honesty, hopefully, will inspire others.

DATABASE DOWNLOADING

Downloading involves the transmission of data from a remote or host computer to the user's on-site premises storage device for later searching, manipulation, or storage.

A teacher/student may:

...download to the printer bibliographic citations or full text of a document identified during a search of DIALOG, Wilsonline, etc., as the terms of the school's contract with the vendors specify. It is assumed that the user will require no more than 20-30 citations, will be using a legitimate password/subscription for invoice purposes, and has local approval to order, receive, and provide payment for a full-text document or citations.

...use downloaded material for individual research or teaching.

A teacher/student may not: (without express written consent of the database vendor)

...keep archival copies of downloaded works

...download a "substantial taking" (complete database or most of the records). Note that this criterion also includes a qualitative aspect. For example, if several records were retrieved from a large database but these records were qualitatively superior to the others the use could also be considered a "substantial taking".

...make commercially available the downloaded material. All four fair-use criteria apply to downloading, but the economic aspect has generally been regarded to be the most important.

PHOTO AND/OR THERMAL COPYING

A teacher may:

... make one copy, for scholarly research or use in teaching or preparation to teach a class, of a chapter from a book, an article from a periodical or newspaper, a short story or short poem, or one chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper. A music teacher may make one copy of a lost part in an emergency if it is replaced with a purchased part in due course.

... write to the publisher of copyrighted material to obtain permission to exceed the limitations of the Copyright Law. The copyright owner will be best able to efficiently answer if the teacher provides one copy of the exact material desired, describes the use and number of copies intended, and allows at least 30 days for an answer.

... make multiple copies (not to exceed more than one copy per pupil in the course) for classroom use or discussion, provided that the copying meets the tests of brevity and spontaneity (defined below), meets the cumulative effect test (defined below), and includes a notice of copyright on the sheets copied. For class study a music teacher may make one copy per student of up to 10% of a musical work, as long as that 10% does not constitute a performable unit.

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TESTS OF FAIR USE REGARDING BREVITY, SPONTANEITY, & CUMULATIVE EFFECT
The definitions vary with the type of medium being copied.

BREVITY

(a) POETRY: a complete poem if less than 250 words and if printed on not more than two pages, or

from a longer poem, an excerpt of not more than 250 words (A teacher may complete an unfinished line of a poem.)

(b) PROSE: a complete article, story, or essay of less than 2500 words, or

an excerpt from any prose work of not more than 1000 words or 10 per cent of the work, whichever is less, but in any event a minimum of 500 words (A teacher may complete an unfinished line of a prose paragraph.)

(c) ILLUSTRATION: one chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue

(d) SPECIAL WORKS: Certain works in poetry, prose, or in "poetic prose" which often combine language with illustrations (e.g., picture books for children or adults) may fall short of 2500 words in their entirety. Such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than 10 per cent of the words found in the text may be reproduced.

PRINTOUTS: from an online search may not be reproduced in their entirety. Two pages or up to 10% of the text may be reproduced.

SPONTANEITY

(a) The copying is at the instance and inspiration of the individual teacher, and

(b) the inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission. (A teacher should not claim spontaneous use a second time for material previously used under the "spontaneity" test.) A letter of "request for permission to duplicate" should be sent to the copyright owner after/during a spontaneous use. The response to that letter will determine future use of the material.

CUMULATIVE EFFECT

(a) The copying of the material is for only one course in the school in which the copies are made.

(b) No more than one short poem, article, story, essay, or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.

(c) There shall not be more than nine instances of such multiple copying for one course during one class term.

(The limitations stated in (b) and (c) above do not apply to current news periodicals and newspapers and current news sections of other periodicals.)

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The Copyright Law and Guidelines are interpreted below as they apply to various teaching/learning situations.

A TEACHER MAY NOT: (without express written consent of publisher)

...copy without including copyright notice

...copy to create or to substitute for anthologies, compilations, or collective works

...copy more than three authors from a collective work

...copy from works intended to be "consumable", such as workbooks, exercises, standardized tests and test booklets and answer sheets, etc.

...copy in order to avoid purchase of books, reprints, music, or periodicals

...be directed by higher authority to make illegal copies

...repeat from term to term the same item

...charge a student beyond the actual cost of the photocopying

...have more than 9 instances of multiple copying in one class term

...copy music for any kind of performance (exception: A lost part may be copied in an emergency if it is replaced with a purchased part in due course.)

...extend the life of a worn-out ditto master by thermal or xerographic process

A TEACHER MAY:

...create a series of slides from multiple sources, such as magazines, books, encyclopedias, etc., as long as a teacher does not exceed 10% of the photographs in any one source and unless the source specifically prohibits any photographic reproduction.

...create a single overhead transparency from a single page of a consumable workbook

...create multiple overhead transparencies from a variety of sources, not exceeding 10% of the total content of any one source, unless this type of reproduction is specifically prohibited

...verify that an item is out-of-print in order to justify duplication

...receive satellite signals into the classroom in a planned teaching situation

...excerpt sections from a filmstrip to create slides as long as this does not exceed 10% of the entire work or excerpt the very creative essence of the work

...reproduce selective slides from a series as long as this does not exceed 10% of the entire production, excerpt the very creative essence of the work, or violate a specific prohibition

...project a film or videotape through a film chain on closed circuit television WITHIN THE BUILDING

...tape the audio and/or video portions of a TV news broadcast

...excerpt sections of a 16mm film to be included in a locally-produced videotape, not to be shown over cable TV, not to exceed 10% of the whole, and not excerpting the essence of the work

...off-air videotape television programs CLEARED FOR COPYRIGHT USAGE (See videotape section, page 11 ff.)

...duplicate visual or audio materials of a non-dramatic literary work in order to provide materials for the blind or deaf. In addition, these and other copyrighted materials may be legally transmitted to blind or deaf persons via cable systems.

...display a copy of a copyrighted work on the opaque projector

...make a cassette tape copy of one selection from a record album, for use one time, as background

NOTE: A music teacher may make a single recording of a student performance for study and for the archives. A music teacher may make a single recording of annual exercises or tests using copyrighted material. In addition to recording music as part of the learning process, music educators may occasionally wish to record student performances and distribute copies of the recording within the community. Once phonorecords of a non-dramatic musical work have been distributed to the public in the U.S. under the authority of the copyright owner, any other person may obtain a compulsory license to record the work by complying with certain procedures and by the payment of the royalty provided in the law: 2 3/4 cents per selection or 1/2 cents per minute of playing time, whichever is greater. (This applies to music played at athletic events unless scores are original by the music educator.) It must be borne in mind that the first recording of a work and its distribution in recorded form requires the consent of the copyright owner.

A TEACHER MAY NOT: (without express written consent of the publisher)

...duplicate a copyrighted film, videotape, phonograph record, audio tape, etc., for any commercial or money-making purpose, such as PTO carnivals, class fund raisers or shows, for which an admission fee is charged

...make archival or back-up copies of copyrighted films, videotapes, phonograph records, filmstrips, or any other audiovisual medium except computer software

...copy radio excerpts onto audio cassette tape to use in the classroom (NOTE: Multiple copyright is very complex and includes various holders: producer, sheet music, record album, etc.)

...project a film or videotape through a film chain on closed circuit television (or cable) to another school in the school system

...tape the audio and/or video portion of a TV documentary for use in the classroom

...read a story from a textbook onto cassette tape for reading motivation. An exception is made for a blind student, however.

...use outside the school copies of videotapes, phonograph records, audio tapes, slide sets, etc., made from copyrighted originals

...make a copy of copyrighted originals owned by some other school, whether within or outside the school system

...duplicate a copyrighted work for the purpose of avoiding the purchase of an additional original copy of the work,

...retain a copy indefinitely. If the copy is intended for long-term use, the copyright owner should be contacted for permission.

...duplicate copyrighted materials on hand from a manufacturer or vendor for preview and evaluation

SUGGESTIONS:

To fully comply with the spirit of fair use, the copying should be at the immediate need and inspiration of an individual teacher or student. In addition, the inspiration and decision to use the work, and the moment of its use for maximum teaching/learning effectiveness should be so close in time that it would be unreasonable to expect a timely reply from the copyright owner to a request for permission to copy.

The user must keep in mind the amount copied in relation to the whole. An individual might be justified in making a single copy of each of five or ten pictures from a book containing 100 pictures, but would not be justified in copying every picture from a book containing only five or ten pictures.

The factors to be considered in determining whether the use made of a work in any particular case is a fair use include:

(1) the purpose and character of the use;

(2) the nature of the copyrighted work;

(3) the amount and substantially of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

VIDEOTAPES

RECORDING TELEVISION BROADCASTS:

The guidelines were developed to apply only to off-air recording by non-profit educational institutions.

AN INDIVIDUAL TEACHER MAY:

...record a broadcast program off-air simultaneously with broadcast transmission (including simultaneous cable re-transmission) and retain it for a period NOT TO EXCEED THE FIRST FORTY-FIVE (45) CONSECUTIVE CALENDAR DAYS after the date of recording. Upon conclusiong of such retention period, all off-air recordings must be erased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge. The 1984 ratification of the Brussels Satellite Convention--a public law agreement obligating states to suppress the unauthorized distribution of satellite-derived signals without the consent of the

originating organization provided Congress with the opportunity to pass legislation affirming the right of private viewers --that is, HOME VIEWERS ONLY--to receive satellite signals without fear of violation of U.S. law, so long as no further distribution of the received signals takes place.

...use off-air recordings once in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction within a single building, cluster, or campus, as well as in the homes of students receiving formalized home instruction, during the first ten (10) consecutive school days in the forty-five (45) calendar day retention period. "School days" are school session days--not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions--within the forty-five (45) calendar day retention period.

...make off-air recordings only at the request of and for use by individual teachers. Off-air recordings may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.

...reproduce a limited number of copies from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.

...after the first ten (10) consecutive school days, use off-air recordings to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes, i.e., to determine whether or not to include the broadcast program in the teaching curriculum. The recording may not be used in the recording institution for student exhibition or any other non-evaluative purpose without authorization.

...use only a portion of an off-air recording. Off-air programs need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

NOTE: All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

Each school is expected to establish appropriate control procedurees to maintain the integrity of these guidelines.

In January, 1984, the U.S. Supreme Court ruled, in the so-called "Sony Betamax" case, that the videotaping of television programs off the air for home use is not a violation of copyright law. Some educators contend that the Court said it is now all right for a

teacher to tape any program at home, carry it to school, and use it in the classroom. "Anyone who thinks this is making a grave mistake," says Kenton Pattie, who heads the Government Relations Department of the International Communications Industries Association. "There is absolutely nothing in the 82-page decision to support this contention." Carmel Clay Schools is accepting the Senate Committee Guidelines that a program may be taped at home or school for use, BUT PLAYED ONLY ONCE, plus one time for reinforcement. Permission to retain and use again, however, must be obtained from the copyright holder.

USING COPYRIGHTED VIDEOTAPES:

A TEACHER MAY:

...use in face-to-face instruction a videocassette PURCHASED BY THE SCHOOL even though it bears a warning label FOR HOME USE ONLY. The key is that the tape is INCORPORATED AS PART OF THE SYSTEMATIC TEACHING activities of the program in which it is being used.

...use for instructional purposes a RENTAL VIDEOCASSETTE bearing the FOR HOME USE ONLY label if the school has obtained a relase statement from the rental agency granting permission for instructional use of the program. (Release Statement is available in media center.)

A TEACHER MAY NOT:

...use either a purchased or rental video program labelled FOR HOME USE ONLY in other than planned, direct, instructional activities. The program may NOT be used for entertainment, fund-raisers, nor time-fillers. Any use, other than instructional, must be negotiated at the time of purchase or rental, usually in the form of a licensing agreement.

...make an archival or back-up copy of a copyrighted film or videotape

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LIBRARIES AND STUDENTS HAVE ADDITIONAL PRIVILEGES OTHERS DO NOT

A STUDENT MAY:

...tape a recording to use as background music for a slide production to be USED IN CLASS. (Since a class effort might be appropriate at a later time as a media fair project or as part of a public display, either inside or outside the classroom, the student is advised to develop an original composition or to use music from a production library or other sources for which the school has obtained a license and copyright permissions.)

...tape a song from a record owned by the student in order to provide music for a class photography project. The program may be shown at no charge to a parent group. However, if the record is owned by a parent, of if admission will be charged, taping the song would be an infringement.

...use an opaque projector to enlarge a visual from a book or magazine onto a poster. (An outline map of the U.S., the states, and rivers may not be copyrighted. These are considered public domain. The colors and details, however, are copyrighted. Any commercial map may be used to generate merely an outline map.)

A STUDENT MAY NOT:

...be directed to violate copyright in behalf of a teacher
...donate student photo copies (that incorporate copyrighted material) to become part of a school's collection

A LIBRARY MAY:

...copy unpublished works (print and phonorecords) for purpose of preservation and security

...copy print materials or phonorecords to replace damaged, deteriorating, lost, or stolen copies if replacements cannot be obtained at a fair price. A music teacher may preserve or replace library copies when not available for purchase.

...reproduce for a patron (student, staff, or member of the community) a single copy of one article or small part of a work to become the property of the patron for the purpose of study or research. (In an effort to promote material the library may also reproduce a single copy of an article or page of a book for all teachers.) THE COPY MUST DISPLAY THE COPYRIGHT WARNING.

...photocopy for the purpose of inter-library loan. However, the following inter-library loan restriction applies: MORE THAN SIX COPIES OF AN ARTICLE from a periodical (not a single issue, but over a year) shall be considered excessive and interpreted as an evasion of purchase of said periodical.

The library media specialist and the media staff are protected from copyright infringement violation by users of equipment under their jurisdiction if every duplicating machine is posted with a copyright warning to the effect that "the use of this machine to reproduce copyrighted material beyond the legal fair use is punishable by fine and/or imprisonment of the user."

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These guidelines will, from time to time, be revised. However, as in many other areas of the profession, copyright law interpretation is continuously changing. Staff must comply with any court decisions or changes in the law that pertain to use of copyrighted materials in the educational setting.

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REQUEST FOR PERMISSION TO COPY

Date_____

Office of Media Services
Carmel Clay Educational Services Center
P.O. Box 2099
Carmel, IN 46032

Person/School making request

_____

TO: Permissions Department

Dear Permissions Department:

We request permission to copy the following copyrighted materials:

Materials to be copied:

Number of copies to be made:

Copy medium:

Use of copies:

Anticipated date of first use:

Distribution of copies:

If we have not heard from you within 30 days, we shall assume that permission to duplicate has been granted.

Thank you for your cooperation. I am enclosing a copy of this request for your files, signed by me, and a self-addressed envelope for the return of this request.

_____
(Signature)

PRODUCER REPLY:

Title_____ Date_____

_____

Permission granted_____ _____
(Signature)

Permission denied_____

Conditions or details:_____

_____

_____

CAMPBELL KYLE PROFFITT

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Please reply to Noblesville office

October 16, 1985

Ms. Karen Neimeyer
Carmel Clay Schools
10475 School Parkway
Carmel, IN 46032

Dear Karen:

I have reviewed both your two-paged, proposed copyright policy and your nine-paged, proposed ruling on use of copyright materials. I believe that your policy and ruling comply with both the spirit and the letter of the copyright statutes as contained in Title XVII of the United States Code, and I am comfortable recommending them to you and to the School Board. Should you have any further questions or concerns about your copyright policy, please feel free to contact me.

Very truly yours,

CAMPBELL KYLE PROFFITT

By Debbie
Deborah L. Farmer

DLF/eah

FEB 2 7 1986

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February 26, 1986

Mr. Doyle McAllister
Associate Executive Director for Field Services
INDIANA STATE TEACHERS ASSOCIATION
150 West Market Street
Indianapolis, Indiana 46204

Re: Carmel Clay Copyright Policy

Dear Doyle:

At your request, I have reviewed the copyright policy for the Carmel Clay School Corporation. The policy as drafted is in full compliance with the current law on copyright. As a matter of fact, it appears to be one of the best efforts I have seen to actually place the copyright law into a workable policy for teachers.

As you know, under Public Law 217, a policy such as this would govern working conditions for the teachers and, thus, would be subject to discussion. If the local Association is dissatisfied with the policy, there may be portions which could be changed which would still comply with the copyright laws.

Please let me know if you wish us to do any additional work on this matter.

Sincerely,

TABBERT & CAPEHART

JANET C. KNAPP

JCK/bas